

(7) Upon written notification that the PLHCP has determined that the miner is unable to wear a respirator, including a PAPR, the miner must be transferred to work in an existing position in an area of the same mine where respiratory protection is not required. The miner must be transferred within 30 days of the final determination by the PLHCP.

(i) The miner must continue to receive compensation at no less than the regular rate of pay in the classification held by that miner immediately prior to the transfer.

(ii) Increases in wages of the transferred miner must be based upon the new work classification.

(8) The mine operator must maintain a record of the identity of the PLHCP and the most recent written determination of each miner's ability to wear a respirator for the duration of the miner's employment plus six months.

(e) Rotation of miners shall not be considered an acceptable administrative control used for compliance with the DPM standard.

[70 FR 32966, June 6, 2005; 70 FR 37901, June 30, 2005, as amended at 70 FR 55019, Sept. 19, 2005; 71 FR 29011, 29012, May 18, 2006; 71 FR 36483, June 27, 2006]

**§ 57.5061 Compliance determinations.**

(a) MSHA will use a single sample collected and analyzed by the Secretary in accordance with the requirements of this section as an adequate basis for a determination of noncompliance with the DPM limit.

(b) The Secretary will collect samples of DPM by using a respirable dust sampler equipped with a submicrometer impactor and analyze the samples for the amount of elemental carbon using the method described in NIOSH Analytical Method 5040, except that the Secretary also may use any methods of collection and analysis subsequently determined by NIOSH to provide equal or improved accuracy for the measurement of DPM.

(c) The Secretary will use full-shift personal sampling for compliance determinations.

[70 FR 32966, June 6, 2005]

**§ 57.5065 Fueling practices.**

(a) Diesel fuel used to power equipment in underground areas must not have a sulfur content greater than 0.05 percent. The operator must retain purchase records that demonstrate compliance with this requirement for one year after the date of purchase.

(b) The operator must only use fuel additives registered by the U.S. Environmental Protection Agency in diesel powered equipment operated in underground areas.

[66 FR 5907, Jan. 19, 2001; 66 FR 35520, July 5, 2001]

**§ 57.5066 Maintenance standards.**

(a) Any diesel powered equipment operated at any time in underground areas must meet the following maintenance standards:

(1) The operator must maintain any approved engine in approved condition;

(2) The operator must maintain the emission related components of any non-approved engine to manufacturer specifications; and

(3) The operator must maintain any emission or particulate control device installed on the equipment in effective operating condition.

(b)(1) A mine operator must authorize each miner operating diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance in order to comply with the maintenance standards of paragraph (a) of this section. The term *evidence* means visible smoke or odor that is unusual for that piece of equipment under normal operating procedures, or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions.

(2) A mine operator must ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized to maintain diesel equipment, and that the affixed tag not be removed until the examination has been completed. The term *promptly* means before the end of the next shift during which a qualified mechanic is scheduled to work.

(3) A mine operator must retain a log of any equipment tagged pursuant to

this section. The log must include the date the equipment is tagged, the date the equipment is examined, the name of the person examining the equipment, and any action taken as a result of the examination. The operator must retain the information in the log for one year after the date the tagged equipment was examined.

(c) Persons authorized by a mine operator to maintain diesel equipment covered by paragraph (a) of this section must be qualified, by virtue of training or experience, to ensure that the maintenance standards of paragraph (a) of this section are observed. An operator must retain appropriate evidence of the competence of any person to perform specific maintenance tasks in compliance with those standards for one year after the date of any maintenance, and upon request must provide the documentation to the authorized representative of the Secretary.

[66 FR 5907, Jan. 19, 2001, as amended at 67 FR 9184, Feb. 27, 2002]

EFFECTIVE DATE NOTE: At 66 FR 5907, Jan. 19, 2001, §57.5066 was added, effective July 5, 2001, except for paragraph (b). At 66 FR 35518, July 5, 2001, the effective date of paragraph (b) was delayed pending disposition of current litigation challenging the rule. At 67 FR 9184, Feb. 27, 2002, paragraphs (b)(1) and (b)(2) were revised, effective Mar. 29, 2002.

**§57.5067 Engines.**

(a) Any diesel engine introduced into an underground area of a mine covered by this part after July 5, 2001, other than an engine in an ambulance or fire fighting equipment which is utilized in accordance with mine fire fighting and evacuation plans, must either:

(1) Have affixed a plate evidencing approval of the engine pursuant to subpart E of Part 7 of this title or pursuant to Part 36 of this title; or

(2) Meet or exceed the applicable particulate matter emission requirements of the Environmental Protection Administration listed in Table 57.5067-1, as follows:

TABLE 57.5067-1

EPA requirement	EPA category	PM limit
40 CFR 86.094-8(a)(1)(i)(A)(2) .....	light duty vehicle .....	0.1 g/mile.
40 CFR 86.094-9(a)(1)(i)(A)(2) .....	light duty truck .....	0.1 g/mile.
40 CFR 86.094-11(a)(1)(iv)(B) .....	heavy duty highway engine .....	0.1 g/bhp-hr.
40 CFR 89.112(a) .....	nonroad (tier, power range) .....	varies by power range:
.....	tier 1 kW<8 (hp<11) .....	1.0 g/kW-hr (0.75 g/bhp-hr).
.....	tier 1 8≤kW<19 (11≤hp<25) .....	0.80 g/kW-hr (0.60 g/bhp-hr).
.....	tier 1 19≤kW<37 (25≤hp<50) .....	0.80 g/kW-hr (0.60 g/bhp-hr).
.....	tier 2 37≤kW<75 (50≤hp<100) .....	0.40 g/kW-hr (0.30 g/bhp-hr).
.....	tier 2 75≤kW<130 (100≤hp<175) .....	0.30 g/kW-hr (0.22 g/bhp-hr).
.....	tier 1 130≤kW<225 (175≤hp<300) .....	0.54 g/kW-hr (0.40 g/bhp-hr).
.....	tier 1 225≤kW<450 (300≤hp<600) .....	0.54 g/kW-hr (0.40 g/bhp-hr).
.....	tier 1 450≤kW<560 (600≤hp<750) .....	0.54 g/kW-hr (0.40 g/bhp-hr).
.....	tier 1 kW≥560 (hp≥750) .....	0.54 g/kW-hr (0.40 g/bhp-hr).

NOTES:

"g" means grams.

"hp" means horsepower.

"g/bhp-hr" means grams/brake horsepower-hour.

"kW" means kilowatt.

"g/kW-hr" means grams/kilowatt-hour.

(b) For purposes of paragraph (a):

(1) The term "introduced" means any engine added to the underground inventory of engines of the mine in question, including:

(i) An engine in newly purchased equipment;

(ii) An engine in used equipment brought into the mine; and

(iii) A replacement engine that has a different serial number than the engine it is replacing; but

(2) The term "introduced" does not include engines that were previously part of the mine inventory and rebuilt.

(3) The term *introduced* does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator.

[66 FR 5907, Jan. 19, 2001, as amended at 66 FR 27864, May 21, 2001; 67 FR 9184, Feb. 27, 2002]